

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 26, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2133

Cir. Ct. No. 2011CV2321

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

CITIZENS BANK OF MUKWONAGO,

PLAINTIFF-RESPONDENT,

V.

EDGEWOOD CONTRACTORS, INC. AND EDGEWOOD BROKERAGE, LLC,

DEFENDANTS,

GAYLE SCHMITT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
J. MAC DAVIS, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Gundrum, J.

¶1 PER CURIAM. Gayle Schmitt appeals a money judgment entered in favor of Citizens Bank of Mukwonago. Schmitt defaulted on a promissory note and the circuit court concluded that she was personally liable pursuant to a guaranty it found she had signed. We hold that the court properly exercised its discretion in not allowing Schmitt to name a new handwriting expert beyond the scheduling order deadlines. We affirm.

¶2 The Bank filed an action to foreclose a mortgage given by Edgewood Contractors Inc. Schmitt, Edgewood's single shareholder, guaranteed the note. Schmitt challenged the authenticity of her signatures on the mortgage's continuing guaranty, contending they were fraudulently produced through forgery, copy-and-pasting or "robo-signing." Schmitt sought to retain a handwriting expert. The scheduling order set a March 15, 2012 deadline for naming an expert and filing the expert's report. Schmitt timely named handwriting expert Jane Lewis, although she did not retain Lewis until June. She did not file a report.

¶3 Just days before the court confirmed the sheriff's sale, Schmitt sought relief from the scheduling order and requested a new one. The circuit court found that Schmitt failed to explain her lack of compliance with the order, but nonetheless agreed to allow her time to depose two Bank officers and subpoena the original guaranties for her handwriting expert to examine.

¶4 Soon after, Schmitt fired her attorney and proceeded pro se. Five weeks before the court trial, Schmitt advised the court that Lewis withdrew because she worked only with represented parties. Schmitt named a new expert, Warren Spencer, and asked that he be allowed access to the "entire mortgage file." When the court learned that Schmitt had known of Lewis's departure nearly a month before informing the court, it denied Schmitt's substitution request, as it left

“too tight” a time frame within which to have a hearing on Spencer’s qualifications. It noted, however, that Schmitt still could have Lewis examine the documents.

¶5 At trial, a Bank vice president testified that Schmitt signed the original mortgage, the original guaranty and the continuing guaranty in his presence. The Bank’s handwriting expert opined that, to the “highest level of our standards,” he had no doubt that the signatures were Schmitt’s. Schmitt produced no witnesses. The circuit court found the Bank’s witnesses credible and entered a money judgment against her. Schmitt appeals from that judgment.

¶6 The single issue on appeal is whether the decision not to allow Schmitt to name a different handwriting expert a month before trial deprived her of a fair trial.¹ Wisconsin circuit courts have inherent and statutory power, within the limits of their discretion, to control their dockets. *Parker v. Wisconsin Patients Comp. Fund*, 2009 WI App 42, ¶9, 317 Wis. 2d 460, 767 N.W.2d 272; *see also* WIS. STAT. § 802.10(3), (3)(f) (2011-12)² (on party’s or its own motion, court may enter scheduling order governing identification and disclosure of expert

¹ Schmitt also raises numerous other issues, including (1) financial and emotional abuse; (2) collusion among Citizens Bank, its officers, its counsel, the Waukesha County Sheriff’s Department, Judge J. Mac Davis and Reserve Judge Patrick Snyder; (3) judicial bias; (4) malfeasance by her counsel; (5) complaints about the confirmation of the sheriff’s sale; (6) lack of standing; (7) failure to try the real issue of the authenticity of the guaranty signatures; and (8) being deprived of her right to a jury trial. She asks for attorney fees and treble damages.

As for the confirmation of the sheriff’s sale, Schmitt stipulated to it in open court and did not appeal the order. Similarly, she did not make a jury request or tender the jury fee. Schmitt’s remaining issues lack factual and legal underpinnings. We agree with the trial court that they are “wild and ... unsupported” and “amount[] to trying to use the legal system to slander [her] opponent.” They bear no further discussion.

² All references to the Wisconsin Statutes are to the 2011-12 version unless noted.

witnesses, limitation on their number and exchange of their names). A trial court may impose sanctions for a scheduling order violation. Sec. 802.10(7). Permissible sanctions include “[a]n order ... prohibiting the disobedient party from introducing designated matters in evidence.” WIS. STAT. § 804.12(2)(a)2.; *see also Siker v. Siker*, 225 Wis. 2d 522, 535, 593 N.W.2d 830 (Ct. App. 1999) (trial court has discretion to bar testimony of expert whose opinions are not disclosed to opposing party by deadline set in scheduling order).

¶7 The scheduling order fixed March 15, 2012, as the deadline for Schmitt to disclose any expert and provide a report. Schmitt timely disclosed Lewis’s name but did not retain her until June, foreclosing the possibility of a timely expert report. After discharging her attorney and learning that Lewis would not work with a pro se litigant, Schmitt waited a month to inform the court, despite having appeared in court in the interim. Schmitt then sought to name a new expert, four months beyond the date in the scheduling order and just weeks before trial. Knowing the Bank disputed Spencer’s qualifications, and given that Schmitt’s dilatoriness led to the cramped time frame, the trial court declined to allow the substitution. Because Schmitt once again had retained counsel, the court reasonably ordered that if Lewis still were amenable to reviewing the documents, she would be allowed to do so at the Bank. Schmitt did not do so, nor did she conduct other discovery, such as deposing Bank officers. The court’s analysis and resolution reflects a proper exercise of discretion.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

